

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

3:16-cr-00051-BR

Plaintiff,

ORDER REGARDING
PEREMPTORY CHALLENGES

v.

AMMON BUNDY, RYAN BUNDY,
SHAWNA COX, PETER SANTILLI,
DAVID LEE FRY, JEFF WAYNE
BANTA, KENNETH MEDENBACH, and
NEIL WAMPLER,

Defendants.

BROWN, Judge.

This matter comes before the Court on the parties' requests regarding the number of peremptory challenges allowed in *voir dire*.

In the ordinary course, defendants in a non-capital felony trial are entitled to ten (10) peremptory challenges collectively and the government is entitled to six (6) peremptory challenges. Fed. R. Crim. P. 24(b)(2). In a case with multiple defendants, however, "the court may allow additional peremptory challenges to multiple defendants, and may allow the defendants to exercise those challenges separately or jointly." Fed. R. Crim. P. 24(b).

The Court notes this complex criminal trial involves eight Defendants, each of whom have many issues in which they share common interests and strategies, but also have issues on which their interests may diverge.

Moreover, Rule 24(c)(4) provides the parties are entitled to additional peremptory challenges if the Court seats alternate jurors. In particular, if the Court seats one or two alternate jurors, the government and Defendants collectively are each entitled to one additional peremptory challenge. Fed. R. Crim. P. 24(c)(4)(A). If the Court seats three or four alternate jurors, the government and Defendants collectively are each entitled to two additional peremptory challenges. Fed. R. Crim. P. 24(c)(4)(B). If the Court seats five or six alternate jurors, the government and Defendants collectively are each entitled to three additional peremptory challenges. Fed. R. Crim. P. 24(c)(4)(C).

Because this case relates to a subject on which some members of the public have strong opposing views, involves consistent coverage in the media from the beginning of the case, and is scheduled for a trial that is expected to last between two and three months, the Court, with the agreement of all of the parties, will seat eight alternate jurors.

Balancing all of these factors in the unusual circumstances of this case, the Court concludes it is appropriate to exercise

its discretion to permit the parties to have additional peremptory challenges. Although Defendants collectively have requested the Court to allow each Defendant four peremptory challenges for a total of 32, the Court concludes it is not necessary to allow that many challenges (and thereby require the qualification of an excess number of potential jurors) in light of the robust jury-selection process in this case. Instead, in the exercise of its discretion, the Court allocates 24 peremptory challenges to Defendants collectively.

Even though Rule 24 does not explicitly authorize additional peremptory challenges to be allocated to the government, the Court concludes it would be fundamentally unfair to grant Defendants more than double the ordinary ten challenges without a proportional increase in the number of government challenges. Accordingly, the Court also exercises its discretion to allocate to the government 14 peremptory challenges.

Peremptory challenges will be exercised in the following order: The government will begin by exercising its first two peremptory challenges, followed by Defendants exercising four peremptory challenges, followed in turn by the government exercising two more challenges. The parties will proceed in that manner until they have exhausted their peremptory challenges.

Because the Court allocates 24 peremptory challenges to Defendants collectively, the Court leaves the decision to

Defendants as to how they choose to distribute those challenges among themselves. If Defendants advise the Court that they have been unable to reach agreement on how to distribute the challenges, the Court will allocate three peremptory challenges to each Defendant. In that instance, Defendants will exercise their challenges in the order in which they are listed in the Superseding Indictment, but in the same pattern (*i.e.*, the government will exercise two challenges, the first four Defendants named in the Superseding Indictment will then exercise one peremptory challenge each, the government will then exercise two more challenges, then the next four Defendants will exercise one peremptory challenge each, and so forth) until all peremptory challenges are exhausted.

Finally, as to peremptory challenges for alternate jurors, the Court allocates four peremptory challenges to the government and four to Defendants collectively proportionately consistent with Rule 24(c)(4).

IT IS SO ORDERED.

DATED this 25th day of August, 2016.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge